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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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OFFICE OF THE SECRETARY

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| In the Matter of |) | <u>00-258/</u> |
| |) | |
| Amendment of the U.S. Table of |) | RM-9911 |
| Frequency Allocations to Designate the |) | |
| 2500-2520/2670-2690 MHz Frequency |) | |
| Bands for the Mobile Satellite Service |) | |

To: The Commission

OPPOSITION TO SIA PETITION FOR RECONSIDERATION

The National ITFS Association ("NIA") opposes the "Petition for Reconsideration of the Satellite Industry Association" filed in this proceeding on February 22, 2001 ("Petition"). The Petition seeks reversal of the Commission's decision in *Notice of Proposed Rule Making and Order* in ET Docket No. 00-258, RM-9920 and RM-9911 ("Order"), not to institute a rulemaking proceeding to amend the U.S. Table of Frequency Allocations to allocate the 2500-2520 MHz and 2670-2690 MHz bands for the Mobile Satellite Service ("MSS").

The FCC's decision not to institute the requested rulemaking proceeding was unquestionably correct. The Satellite Industry Association ("SIA") has offered nothing new that would serve as a legitimate basis for reconsideration. Therefore, the SIA Petition should be denied.

Background

In its original Petition for Rule Making, SIA sought to have the FCC institute a proceeding that, ultimately, could deprive incumbent ITFS and MMDS licensees of their spectrum so that SIA's members could use it for a different purpose. Despite clearly having the burden to show that the requested Commission action would serve the public interest, the

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original SIA rulemaking petition was a patently defective basis for commencing the requested proceeding. SIA failed even to recognize that the 2500-2520 MHz and 2670-2690 MHz bands were allocated to and used by incumbent licensees for pervasive and invaluable purposes. It also failed to suggest, much less demonstrate, that there was any mechanism that might accommodate MSS use of the bands while protecting incumbent services. Therefore, SIA provided no basis for a Commission decision to institute an rulemaking.

In the Order, the Commission took note of the patent defects in SIA's position and the overwhelming weight of opposition to the requested rule making proceeding. It concluded that any reallocation of the 2.5 GHz band for MSS is unwarranted, as sharing the band by MSS and incumbent users would present substantial technical challenges, and MSS already has access to a significant amount of spectrum below 3 GHz to meet its needs for the foreseeable future. The FCC also found that SIA did not meet its burden, as a petitioner, to present sufficient reasons to justify the institution of a rulemaking proceeding. *See* Order at ¶ 73.

SIA challenges the Order, arguing that the FCC gave too little credit to its arguments and did not provide a reasoned basis for its decision. SIA now argues that sharing between MSS and terrestrial ITFS/MMDS services is feasible. SIA also reiterates its prior, but now rejected, claim that existing spectrum allocations for MSS are insufficient. Both of these arguments are frivolous.

Argument

I. SIA Failed to Meet Its Burden to Demonstrate A Basis for Instituting A Rule Making

The inevitable consequence of SIA's failure in its original petition to acknowledge the existence or appreciate the nature of incumbent ITFS and MMDS services in the 2.5 GHz band is

that SIA did not provide a solution to the problem posed by its proposed invasion of occupied spectrum. SIA's failure to do so fully justified denial of its request.

SIA had the burden of persuasion in this matter. Yet, SIA did not provide "sufficient reasons in support" of the allocation of 2.5 GHz spectrum to the MSS, as required by Section 1.407 of the FCC's Rules. It claimed a need for additional MSS spectrum, but that claim was shown by comments and confirmed by subsequent events to be specious, given the utter market failure of MSS operators and the existence of other MSS spectrum that has not yet been used. SIA also did not provide the FCC any evidence that MSS use of the bands could be accommodated without interfering with incumbents. Indeed, SIA did not even acknowledge that incumbents exist. There was clearly no basis for the institution of a rulemaking, as there was no prospect whatsoever that the allocation could be made. Thus, denial of the original SIA petition was the only right decision.

II. SIA's Petition for Reconsideration Does Not Cure Its Prior Failures

SIA now argues that there is some basis for sharing the 2.5 GHz spectrum between ITFS/MMDS and MSS, referring to a "TIA joint working group TR14.11/TR34.2, which developed TSB 86 on sharing between the MSS and the Fixed Services (*including ITFS and MMDS*) in the 2 GHz bands." SIA Petition at 6 (emphasis added). Incredibly, SIA believes that this mere reference meets its burden to show feasibility of its proposal and shifts the burden to ITFS and MMDS licensees to demonstrate that sharing is not viable.

In fact, despite SIA's representation to the Commission that it does so, TSB 86¹ does *not* mention ITFS and MMDS in any manner whatsoever, does *not* deal with the 2500-2690 MHz band, and does *not* even draw conclusions about the viability of sharing for the services and bands it studies. Instead, its focus is on the methodology for evaluating interference in the 2165-2200 MHz band between MSS and terrestrial fixed microwave point-to-point facilities. SIA's citation to TSB 86 as a basis to suggest that sharing is feasible with ubiquitous point-to-multipoint and cellularized operations in the 2500-2690 MHz band is not only wrong, but so utterly baseless that it borders on the fraudulent. SIA's willingness to stoop to such transparent deception only serves to highlight the shallowness of its position.

SIA also suggests that sharing between MSS and ITFS/MMDS might be possible because the new wireless fixed broadband services being rolled out in the 2500-2690 MHz band "will be used mainly in urban areas," while most MSS services will operate in "rural areas where there is no cellular or PCS service." SIA Petition at 6. In fact, however, neither traditional ITFS distance learning services nor fixed wireless broadband services in the 2500-2690 MHz band are limited to urban areas. Indeed, NIA and other parties see fixed wireless in the 2500-2690 MHz band as the only technology that can affordably bring broadband data services to rural and other underserved areas in the United States.

SIA goes on to argue once again that existing spectrum is insufficient for MSS. However, this argument merely reiterates what SIA said the first time around (essentially that, since the ITU saw fit to designate the 2500-2520 and 2670-2690 MHz bands as potential locations for MSS, MSS interests in the United States must need them), and it suffers the same

¹ Telecommunications Industry Association, TIA/EIA Telecommunications Systems Bulletin TSB86, "Criteria and Methodology to Assess Interference Between Systems in the Fixed Service
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failure as before. SIA still does not address the apparent failure of the business models of MSS operators in the real world marketplace, and the effect of such failures on the actual need of its members for additional spectrum. In view of its reticence to discuss the obvious question – why an industry abjectly failing from lack of customers and loss of investment believes it needs more spectrum – SIA's claim for such a need simply cannot be taken seriously.

Conclusion

The National ITFS Association is unequivocally opposed to *any* portion of the ITFS/MMDS band being allocated to the MSS. SIA's latest attempt to convince the FCC to institute a proceeding to reallocate portions of the band suffers flaws just as fatal as its prior attempt. For these reasons, the SIA Petition must be denied.

Respectfully submitted,

NATIONAL ITFS ASSOCIATION

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and the Mobile-Satellite Service in the Band 2165-2200 MHz" (1999).

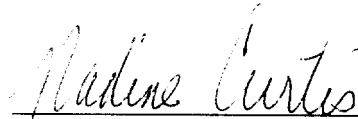
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply was mailed this 22nd day of March, 2001 to the following:

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